

1. How Are the Title V Permitting Requirements Applicable?

We intend, by placing the new standards only in 40 CFR part 63 and not cross-referencing them in RCRA regulations, to rely on existing air programs to implement the new requirements, including operating permits programs developed under title V. All hazardous waste combustors subject to the MACT standards promulgated in this rule will thus be subject to title V permitting requirements for air emissions and related operating requirements (this includes hazardous waste combustors that are considered area sources under the CAA, as discussed in more detail below). In this rule, we are not amending any of the existing air permitting procedures. The procedures of 40 CFR part 71 for federal operating permits, or a State title V program approved under part 70, will remain applicable. Thus, all current CAA requirements governing permit applications, permit content, permit issuance, renewal, reopenings and revisions will apply to air emissions from hazardous waste combustors pursuant to promulgation of the hazardous waste combustor MACT standards.²⁹³

The public participation requirements for title V permits in parts 70 and 71, such as allowing an opportunity for public hearing and public comments on draft permits, also apply (see 40 CFR 70.7(h) and 71.11). We are committed to enhancing public participation in all of our programs. In 1996, we published a guidance manual on public involvement in the RCRA program intended to improve cooperation and communication among all participants in the RCRA permitting process (*RCRA Public Participation Manual*, EPA530-R-96-007, September 1996). Although the Manual is written in the context of the RCRA program, the principles are common to all program areas. For example, the Manual encourages early and meaningful involvement for communities and open access to information. It also acknowledges the important role of public participation in addressing environmental justice concerns. Since these principles are applicable in all situations, we encourage air programs and sources subject to the hazardous waste combustor MACT standards to refer to the RCRA manual for additional guidance on implementing effective public participation activities.

2. What Is the Relationship Between the Notification of Compliance and the Title V Permit?

The hazardous waste combustor MACT standards promulgated in this final rule include emissions limitations for several hazardous air pollutants, as well as detailed compliance, testing, monitoring, and notification requirements. Under these provisions, you not only demonstrate compliance with the emissions limitations, but also demonstrate that you have established operating requirements and monitoring methods that ensure continuous compliance with those limits. These demonstrations are made during a comprehensive performance test and subsequently documented in an NOC.

We are requiring, in § 63.1210(f), that you comply with the general provisions governing the NOC codified in § 63.9(h). Those provisions specify that in addition to describing the air pollution control equipment (or method) for each emission point for each hazardous air pollutant, the NOC also must include information such as: methods that were used to demonstrate compliance; performance test results; and methods for determining continuous compliance (including descriptions of monitoring and reporting requirements and test methods). We also are requiring in § 63.1207(j) that you comply with the all of the operating requirements specified in the NOC upon submittal to the Administrator.

Although these requirements are self-implementing, in that you must comply in accordance with the time frames set forth in today's rule, the requirements are ultimately implemented through title V operating permits (see 40 CFR parts 70 and 71). Section 63.1206(c)(1) specifies that: (1) You can only operate under the operating requirements specified in the DOC or NOC (with some exceptions as laid out in the regulations); (2) the DOC and NOC must contain operating requirements including, but not limited to, those in § 63.1206 (compliance with the standards and general requirements) and § 63.1209 (monitoring requirements); (3) operating requirements in the NOC are applicable requirements for the purposes of 40 CFR parts 70 and 71; and, (4) operating requirements in the NOC must be incorporated into the title V permit. In addition, because title V permits can only be issued if, among other conditions, "the conditions of the permit provide for compliance with all applicable requirements" (see §§ 70.7(a)(1)(iv) and 71.7(a)(1)(iv)), parts 70 and 71 are clear that title V permits must contain the operating requirements documented in the NOC.

As mentioned above, you must comply with all operating requirements specified in the NOC as of the postmark date when the NOC is submitted to the Administrator. Operating requirements documented in the NOC must be included in your title V permit—either through initial issuance if you do not yet have a title V permit, or through a permit revision if you already have a permit. Including information from the initial NOC in title V permits should not create the potential for any compliance conflicts. Because it is the first time the NOC operating requirements are incorporated into the permit, there would be no requirements already on permit with which the NOC would conflict.

However, the potential for compliance conflicts could be created when a subsequent NOC is submitted. For example, you are required to conduct periodic comprehensive performance testing (see § 63.1207(d)(1)). Subsequent to each test, you must submit another NOC to the Administrator. Because of the dynamics of the testing and permitting cycles, it is possible that once you have information from the initial NOC in the permit, you could find yourself, after subsequent testing, in a situation where there might be potentially conflicting requirements with which you must comply (i.e., requirements in the title V permit and requirements in the most recently submitted NOC). This might occur, for example, if any of the operating requirements changed from the previous test.²⁹⁴ The potential for compliance conflicts that might arise from this situation can be avoided, however, by following the guidance presented below.

The requirements in parts 70 and 71 govern the timing and procedures for permit issuance, revisions, and renewals, and you should refer to those requirements when obtaining or maintaining your permit. For today's rule, we provide guidance on what we recommend as to how operating requirements in the NOC should be incorporated into title V permits.²⁹⁵

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essentially an interpretation of the current part 70 and 71 rules.

²⁹⁶ If, however, the source fails to comply with its proposed permit terms and conditions during this time period, the existing terms and conditions it seeks to modify may be enforced against it (§§ 70.7(e)(2)(v) and 71.7(e)(1)(v)).

²⁹⁷ The final rule language in these sections differs from that in the NPRM to reflect placement of the standards only in part 63 and deferral of RCRA controls to the air program.

For incorporating information from an initial NOC into a title V permit, when you have an existing title V permit, we recommend that you and your permitting agency follow the procedures for significant modifications. The primary rationale for using these procedures is to afford the public an opportunity to review all of the information pertinent to your compliance obligations. We want to ensure a

level of public involvement when including operating requirements in title V permits that is commensurate with that under RCRA. In RCRA, operating parameters are initially developed pursuant to trial burns and incorporated into permits either through initial issuance (in the case of facilities operating under RCRA interim status) or through a RCRA class 2 or 3 permit modification (in the case of new facilities). In either situation, significant opportunities exist for public review and input parallel to those under initial title V permit issuance or significant permit modification procedures.

With regard to a subsequent NOC developed pursuant to periodic performance tests, we prefer an implementation scheme for this rule that avoids unnecessary permit revisions. Thus, we recommend that you coordinate your five-year comprehensive performance testing schedule with your five-year permit term to the extent possible. This would allow changes in the NOC to be incorporated into the permit at renewal rather than through separate permit revisions. This also helps to minimize the number of permit revisions, as well as, the likelihood of having two sets of requirements with which to comply.

We recognize, however, that such coordination may not always be possible or feasible. At times, it may be necessary to include information from the most recent NOC through a permit revision. We expect that this will be accomplished using, at most, the minor permit modification procedures in § 70.7(e)(2) or § 71.7(e)(1). Keeping in mind that the information from the initial NOC was included either as part of the initial permit issuance or as a significant revision, the information was already subject to review by both the regulatory agency and the public. Thus, the public should have a clear understanding of your compliance obligations. The obligation to comply with the emissions limitations in §§ 63.1203, 63.1204, or § 63.1205 does not change even if any of the associated compliance information, such as operating limits, is revised pursuant to subsequent performance tests. Given our experience in regulating (under RCRA) the types of sources subject to today's MACT standards, we do not expect the information in a NOC to change significantly over time. We have been regulating these sources for almost twenty years; the testing and monitoring requirements we are promulgating in this rule reflect the "lessons learned" over time. Thus, the initial set of compliance parameters are likely to need primarily minor changes over time. You and your regulatory agency also are experienced in setting operating parameter limits and monitoring systems to ensure compliance with performance standards. Again, this expertise and experience suggests that primarily minor adjustments will need to be made. In light of these factors, we are confident that changes in the NOC may be appropriately incorporated into title V permits using the minor permit revisions procedures. Furthermore, regulatory agencies are obligated under § 63.1206(b)(3) to make a finding of compliance based on performance test results. This requirement provides an additional administrative safeguard to ensure that you are setting the proper operating limits.

The minor permit modification process will allow you to meet your compliance obligations under § 63.1207(j) and begin to comply with the conditions in the NOC upon submittal (i.e., post-mark). Under §§ 70.7(e)(2)(v) and 71.7(e)(1)(v), you may make the change proposed in the minor permit modification application immediately after filing such application. Following this, you must comply with both the applicable requirements governing the change and the proposed permit terms and conditions (i.e., the information from the NOC that you are incorporating into your permit). The provisions in this section also ensure that you will not be in the position of having to choose between compliance with the NOC or compliance with your permit because this section also specifies that during this time period, you need not comply with the existing permit terms and conditions you seek to modify.²⁹⁶ Since the NOC is submitted to the Administrator once you have a title V permit (see § 63.9(h)(3)), we expect that you will submit the NOC together with a minor permit modification application. Any modifications added to the permit through this process can be reviewed by the public at the time of permit renewal.

We encourage permitting authorities to develop permits in a way that minimizes the need for future permit revisions and is consistent with the requirements in parts 70 and 71. For example, you may request that your permitting authority develop a permit that contains alternative operating scenarios. This would allow you to alternate among various approved operating scenarios while concurrently noting the change in your operating record.

3. Which RCRA Permitting Requirements Are Applicable?

The RCRA permitting requirements particular to incinerators and boilers and industrial furnaces are found in 40 CFR 270.19, 270.22, 270.62, and 270.66. These permitting requirements apply to new facilities, to those operating under interim status while they pursue a permit, and to sources seeking to renew their permits. In today's final rule, we amend the introductory text in each of these sections to reflect that RCRA permitting requirements for hazardous waste combustor air emissions and related operating parameters will not apply once you demonstrate compliance with the requirements of the new MACT standards by completing a comprehensive performance test and submitting a NOC to the Administrator.²⁹⁷ The timing for the deferral of the RCRA permitting requirements is consistent with the timing in today's rule for the deferral of applicable standards in 40 CFR parts 264 and 265.

Even though we rely on the title V permitting program to address air emissions from hazardous waste combustors, we still need RCRA permits at these sources to address: (1) Other RCRA regulations applicable to all types of RCRA units, including hazardous waste combustors, that are not duplicated under the CAA; (2) any risk-based emissions limits and operating parameters, as